

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 11 January 2006

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

1st Meeting 2006, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Mr Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Rob Gibson (Highlands and Islands) (SNP)

*Richard Lochhead (North East Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

Libby Anderson (Annex Consultancy)

Ross Finnie (Minister for Environment and Rural Development)

Charles Milne (Scottish Executive Environment and Rural Affairs Department)

Siobhan Mullan (University of Bristol)

John Paterson (Scottish Executive Legal and Parliamentary Services)

Ian Strachan (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Neil Stewart

LOCATION

Committee Room 6

Scottish Parliament

Environment and Rural Development Committee

Wednesday 11 January 2006

[THE CONVENER opened the meeting in private at 10:00]

10:33

Meeting continued in public.

Animal Health and Welfare (Scotland) Bill: Stage 1

The Convener (Sarah Boyack): I welcome colleagues, members of the press and members of the public to the meeting. I remind everyone to put their mobile phones and BlackBerries to silent.

Our first agenda item is the final evidence-taking session at stage 1 of the Animal Health and Welfare (Scotland) Bill. As the lead committee on the bill, our job is to report to the Parliament on the key principles and provisions and to recommend whether the general principles of the bill should be agreed to. We have heard from a series of witnesses with a range of expertise. Our final panel comprises Libby Anderson from Annex consultancy and Siobhan Mullan, who is a senior clinical training scholar in animal welfare science, ethics and law at the University of Bristol veterinary school.

We do not seek opening statements from the witnesses, but their written evidence has been circulated to members. I hope that today's session, which is our first in 2006, will allow us to catch up on some of the issues and questions that arose during our previous evidence-taking sessions and to probe in a bit more depth the evidence that we have received so far. With those thoughts in mind, I ask colleagues who would like to kick off our questions this morning.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I would like to direct a question or two about extended powers of slaughter to Libby Anderson. As we know, the bill gives the minister significant subordinate legislation powers, which will enable him to act as he thinks fit in certain circumstances. Presumably, when he does so, he will have taken veterinary advice. Is that not sufficient for you, given that he may have to move very quickly?

Libby Anderson (Annex Consultancy): The concern is that the bill is drafted in very broad

terms and that it does not allow for appeal. You are right to say that it makes provision for veterinary advice to be taken, but, as you say, the minister will have to move very fast. I want to highlight the concern that, according to the explanatory notes, animals that are 180km away from the seat of disease could, theoretically, be slaughtered. The committee has heard from farmers that that power is very wide. People who are interested in animal welfare and the management of mass slaughter would also be concerned about it.

Having said that, especially in the context of what is happening at the moment and the minister's responsibility to protect citizens from epizootic disease as well as to preserve animal health, I must accept that the minister should have such powers. I would like to be given more detail on the nature of the advice that will be taken and to see a greater possibility of appeal and challenge.

Mr Brocklebank: Are you saying that you would like more specific reference to the powers of the vets in such circumstances to be written into the bill?

Libby Anderson: There should be more detail on the nature of the veterinary advice and on the considerations that would be taken into account, such as biosecurity measures. During the 2001 foot-and-mouth disease epidemic, there were half a dozen challenges to the minister's powers. Those challenges were not successful, even though it has now been accepted that the contiguous cull went beyond the provisions of the Animal Health Act 1981. We do not want that to happen again. One challenge concerned animals that had been brought into the house—five pet sheep. Whether it was proportionate for the minister to order the slaughter of those animals is another question.

Mr Brocklebank: Would Siobhan Mullan like to comment on the issue?

Siobhan Mullan (University of Bristol): In general, I believe that it is important that veterinary advice should be taken. I am less concerned than Libby Anderson is about the extent of the bill's provisions. On this issue, I am happy with the bill as it stands.

Elaine Smith (Coatbridge and Chryston) (Lab): My question, which is for Libby Anderson, follows on from the comments of my colleague Ted Brocklebank. In paragraph 2.1 of your submission, you say:

"The primary value of animals in Part 1 is economic, economic considerations outweigh compassion and the only redress required in times of mass slaughter is financial."

What other redress are you thinking about?

Libby Anderson: There is no form of redress that courts could order, other than financial compensation. That is why it is necessary for us to consider how proportionate the measures are. When I made the comment about economic considerations and compassion, I was not in any sense making a personal remark about the Executive or the minister. I was referring to a policy that, as we know, is dictated forth of Scotland. In the context of foot-and-mouth disease, I was referring to trade considerations. Peter Stevenson provided the committee with a much better explanation of those than I could. The European Union requirement for disease-free status is not a terribly old policy and it should develop. Trade and disease-free status should not be set in stone.

I realise that I am getting away from your question. However, given that only financial compensation is available and given that the bill promotes animal health and welfare standards, we must set it in the context of our aspirations for animal health and welfare.

Elaine Smith: I am interested in domestic animals such as cats, dogs and the five sheep that you mentioned. If pedigree domestic animals are slaughtered for any reason, monetary compensation is available, but that does not compensate for the emotional impact of such a move. Indeed, in paragraph 2.2 of your submission, you say that the powers in the bill

"may not adequately reflect the public's emotional attachment to animals",

by which you mean domestic and other animals. I am not sure how such an aim could be achieved. Are you suggesting that we should focus more on prevention?

Libby Anderson: Definitely. In one very old case, a judge who was able to award compensation of only 5 shillings for a cat that had been killed by someone said that the fact that he could award compensation only to the cat's monetary value was a matter of regret, because such a ruling could not reflect the owner's attachment to the animal. We need to bear such matters in mind without unduly constraining the minister. After all, I acknowledge the seriousness of disease outbreaks.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): As far as disease control, vaccination and powers of slaughter are concerned, I feel that we need a robust process, and forcing someone to go to court in the middle of a disease outbreak to appeal a ministerial decision is a bit of a nuclear option. Will you flesh out in some more detail what you think an ideal process would consist of? Can we put something into legislation that would help to define the process? At the moment, we have

contingency planning for disease outbreaks. Could something in that process other than automatic recourse to the courts provide a check and balance on ministerial powers? What would be the ideal process in that respect?

Libby Anderson: Contingency planning and biosecurity are vital. Perhaps in any disease outbreak the process should run its course and we should pre-empt the need for challenges. I believe that that is what you are getting at. I have not really turned my mind to the specifics of the matter, but perhaps it should be discussed further by the Parliament or with the Executive. Perhaps the matter could be dealt with in the current animal health and welfare strategy, which is aimed at disease control and can incorporate all sorts of aspects.

Mr Ruskell: We have heard strong evidence on the need for the bill to refer to veterinary advice, perhaps in conjunction with ministerial powers. How could we frame such a provision? Where would it come in? Clearly, it would not come in right in the middle of a disease outbreak, but it would have to come in at some point. How can we frame that meaningfully in the bill?

Libby Anderson: You are suggesting that there should be a protocol on veterinary advice to ensure that no delays occur. I should point out that the contingency plan already exists; perhaps we need to plan out scenarios to ensure that everyone understands what they must do in any given situation. Indeed, we must ensure that people who keep animals understand their responsibilities and what is likely to happen.

Mr Ruskell: So there should be a protocol on veterinary advice with ministers.

Libby Anderson: Yes.

Mr Ruskell: Do you have any thoughts on this matter, Siobhan?

Siobhan Mullan: Veterinary advice is crucial, particularly before an outbreak. After all, when it happens, everything moves very quickly.

Because many decisions were taken during the foot-and-mouth outbreak, we are still poring over the data and are even now unclear about what the best policy was. It would be useful if the bill stipulated that the situation must be reviewed and that policies should be kept up to date with current scientific knowledge and understanding. However, to begin with, any policy should bring together the minister and veterinary advice to ensure that, if anything happens on any particular day, everyone knows what has to happen and the machinery can roll into action.

10:45

The Convener: Thank you. We have pretty much covered everything on part 1 on animal health, so I would like to proceed to part 2, which is about animal welfare.

Rob Gibson (Highlands and Islands) (SNP): I am keen to look at the definitions of animals and protected animals, which are in section 14 and section 15. I have asked previous witnesses about the alteration of the immediate environment of wild animals such as deer. We must have a definition that covers a particular set of animals. Do either of you have any observations on the evidence that we have heard so far?

Siobhan Mullan: Are you talking about protected animals or the definition of protected animals?

Rob Gibson: The definition.

Siobhan Mullan: I would like to see all legislation being of the same standard. For example, the Animals (Scientific Procedures) Act 1986 includes a species of octopus that would not be covered by the bill, but in order to be consistent and whatever the purpose of the legislation, animals are either sentient or they are not. It would be helpful if consistent definitions could be achieved. It would be useful to include additional species rather than, for example, removing the octopus from ASPA. Consideration could also be given to including animals before they are born or hatched.

The bill clearly states that the minister has the ability to extend the definition. It is clear from the New Zealand Animal Welfare Act 1999 that the New Zealand ministers were persuaded by evidence of sentience. It is a matter of looking at the evidence and making a decision. I favour going further.

Rob Gibson: Other people may want to talk specifically about that, and we will ask the minister about it. However, I want to concentrate on the extent of protection for wild deer, especially where alteration of the environment is concerned.

Siobhan Mullan: There is no doubt that people have a proportionate responsibility for the animals with which they interact, including wild animals. It is one thing if that interaction is very brief, but feeding wild deer can have potentially dramatic consequences on their welfare and behaviour. It would be right if the bill were to include the responsibility for any effect that people might have on those potentially wild animals.

Rob Gibson: That, of course, would be difficult to define. Should the words "potentially wild" or something similar be included? We have to find words that will capture the definition. I do not know whether you can help us.

Libby Anderson: The definition is about control, rather than the wild animal. The deer or birds that people feed may become temporarily habituated, though not dependent, on what they are given. They may get into the habit of coming for food, but that would not mean that they were under control. I am more aware than Siobhan Mullan that that aspect of the bill has concerned you. I have never seen the act of providing food as one that brought animals under control, because ultimately the animals are still free living and can survive by other means.

I have had some other thoughts on the ways in which animals are controlled—thoughts on wounding and trapping, for example. I considered one or two historic cases and it seemed that judges considered the time during which an animal was captured to be germane to the degree of control that was exerted over it. Siobhan Mullan spoke about time as well. The first case, which was a sort of test case, involved a stag that was hunted and captured and then killed. In that case, the stag was ruled not to have been captive.

I also remember a Scottish Society for the Prevention of Cruelty to Animals case that concerned a fox trapped in a culvert. If a fox is held captive not directly by man but by a dog at the entrance to its earth, is it captive or not? Duration might well be an important factor in answering that question.

Rob Gibson: I take your point, but I want to press an issue that vets and others have raised. Fencing by roadsides and on estates affects the way in which we consider deer as wild animals. Increasingly, people want to keep deer off the roads, and that might be considered as putting more controls on the animals. However, altering the environment of the area in which the animals move would—as you suggest in your evidence—call into question whether the animals fit the definitions in the bill and whether they come under the spirit of the bill.

Libby Anderson: The degree of control that is exerted over the animals would be important; we would have to consider whether they still had enough freedom to move around. "Control" could be interpreted as meaning something much tighter than the situation that you describe.

Siobhan Mullan: If you consider the needs of an animal that you accept is under control, and if you consider actions that alter the animal's ability to satisfy those needs by itself, that might lead towards a definition. If you take away an animal's ability to look after itself, you should have a responsibility to provide whatever it is that you have removed from it.

The Convener: Are the provisions in the bill clear enough to allow land managers and non-

governmental organisations to understand the limits of the bill? There will always be differences of interpretation, but is the bill as drafted robust enough to withstand legal challenges that may arise if people think it is fuzzy? We have to consider that when considering exactly where to draw the lines.

Gamekeepers and land managers seemed slightly nervous about some of the provisions. Definitions of species will be critical and—as Libby Anderson suggested—so will definitions of the degree of control over an animal and the time during which that control is exerted. Gamekeepers and land managers would say that they are helping animals by allowing them to be fed in winter, but others might say that the responsibility should be greater than that. We have to work out exactly where the responsibilities lie, and we have to consider whether the bill provides a sufficiently robust framework so that everyone knows where they are.

Libby Anderson: The definition of protected animals is not the only important issue—the introductory sections of the bill have to be read and the bill as a whole has to be considered, along with people's responsibilities. Does having control over an animal mean being in charge of it and being responsible for it? Would having that responsibility make a person responsible for any offence? Each section of the bill sets out different criteria, but the bill has to be considered as a whole. Section 15, if it is read on its own, might be slightly misleading.

The Convener: If the bill as drafted is agreed to, would clear guidance be required to pull together all the sections to give people a relatively straightforward explanation?

Libby Anderson: Yes. If there is a suggestion that an offence has been committed, questions will arise over whether someone was responsible and whether the animal was under their control at the time. To me, that seems to include some checks and balances.

Siobhan Mullan: I agree; there was always going to be a grey area in that respect. The suggestion of combining sections 15 and 22 is reasonable. The bill should make provision for the things that the animal cannot sort out for itself.

The Convener: Okay. If no one else wants to come in on that topic—

Libby Anderson: If I may, convener, I have a point to make on the definition. Previous witnesses have commented on the layout of section 15. I agree with Mike Radford's suggestion that the word "or" should be inserted after section 15(a), after

"of a kind which is commonly domesticated in the British Islands".

Three separate criteria are provided for in subsections 15(a), 15(b) and 15(c); the drafting should not make it look as if they are dependent on one another.

Siobhan Mullan: I agree.

The Convener: Okay. Thank you.

The issue of sanctuaries has been raised with us quite often. Concern has been expressed about whether local authorities have enough resources to implement the provisions for sanctuaries.

We have heard evidence that, although people are broadly happy with the idea of licensing, their worry is that small sanctuaries could be excluded. The basis for that concern is that sanctuaries that start out small can grow incrementally over time and that those who are involved in managing them may be unable to keep up with the increase in size. Are the bill's provisions for sanctuaries wide enough? Are the licensing provisions sharp enough and are they capable of being implemented in light of the available resources?

Libby Anderson: I said quite a lot on that issue in my submission. It was suggested that one of the things that I should do in preparation for this session would be to look at other animal welfare legislation. Siobhan Mullan referred earlier to the New Zealand Animal Welfare Act 1999. That is a good model, as it is similar in structure to the bill.

I also looked at one of the latest pieces of legislation on the subject, which is the Austrian Animal Protection Act of 2005. The New Zealand act does not say anything specific about sanctuaries, whereas the Austrian act takes a half-way approach. It sets down the minimum requirements for licensed premises, including sanctuaries, but leaves regulation to the minister. I appreciate that there is merit in that approach, but I also appreciate the flexibility that an entirely enabling bill provides. We need reassurance that adequate provision will be made to meet the need. The issue of sanctuaries is quite urgent. A number of cruelty cases have involved sanctuaries—the situation can deteriorate rapidly and large numbers of animals can suffer. The SSPCA and other animal welfare groups have campaigned on the issue for a long time.

Section 24 is adequate as it stands, but the secondary legislation should be produced more quickly than the Executive proposes. I understand that it will not be introduced until 2008. I would like provision to be made along the lines of the Companion Animal Welfare Council's recommendation for a licensing scheme that makes allowance for the registration of small sanctuaries. Breach of a licence is a distinct offence; if there is a requirement for a sanctuary to have a licence, that licence can be removed. Licensing allows for inspection and more protection.

I cannot answer the question on available resources, because I am not clear about the level of provision that has been made. Obviously, the way in which local authorities spend their money is up to them, but people are anxious that the situation will vary from place to place.

Siobhan Mullan: I have no comment on the question of resources. I understand why the Executive proposes to look only at large sanctuaries. Obviously, in that way, the largest proportion of animals that live in sanctuaries will be covered. However, I know from experience that often, when people start ad hoc little places in their back gardens—even when they do so out of genuine kindness and concern—they are not necessarily acting in the animals' best interests. I am keen for such sanctuaries to be licensed or registered in some way. For example, they could be made to keep records so that we have some idea of the number of animals that go through them. We need an ability to have an input into the running of such places to improve standards and encourage education. I am keen for the licensing provision not to be limited to larger sanctuaries.

11:00

The Convener: A few witnesses have raised that concern. The issue is how we require people to make the local authority aware that they have animals under their control. We must consider what the trigger point or threshold would be. Libby Anderson says that regular good inspections are needed, but the issue is the point at which somebody's outfit becomes subject to inspection and how the local authority will know when to inspect it. Should that happen through tip-offs from members of the public or should a more robust process be put in place under which people are required to notify the local authority when they have X number of animals? We need to work out who does what and who should have the responsibility.

Libby Anderson: A registration requirement would require people to inform the authorities that they had a certain number of animals, but it would not allow inspections in the way that a licensing system would, nor would it have sanctions attached to it. When complaints come through tip-offs by members of the public, that means that there is a problem and that animal welfare has been breached. The aim of the bill is to prevent such problems.

The Convener: I am trying to tease out how you would change the bill to avoid that happening.

Libby Anderson: I would be fairly satisfied with an assurance that there would be a full licensing scheme with a shorter licensing period. Even with provision for more frequent inspections, there is a

risk that extended licences will lead to a lesser inspection regime. If we knew that a comprehensive licensing and registration scheme would be introduced reasonably soon, we would be happy with the enabling powers. If we were not confident about that, we could consider the Austrian model, in which minimum standards for sanctuaries are set down in an act, but the finer detail is left to regulations.

Siobhan Mullan: The issue comes down to confidence in what is likely to happen. There is no problem with requiring people to say that they have a certain number of animals, whatever the minimum number is.

The Convener: We will test that issue with the minister later to see how we establish that confidence.

Elaine Smith: I have a couple of questions for Libby Anderson and one for Siobhan Mullan. Libby Anderson's submission mentions mutilation and we have had a lot of evidence about tail docking. Is tail docking ever necessary—for example, to prevent future suffering for working dogs?

Libby Anderson: The problem with exempting working dogs across the board is that such an exemption would be too general. A few weeks ago, the committee heard excellent evidence from Chris Laurence that docking newborn puppies' tails causes suffering. Starting from that standpoint, the problem with exempting working dogs is that thousands of puppies would definitely suffer pain. We have to balance that with the possibility that undocked adult working dogs might suffer injuries and would definitely suffer pain as a result. That would be absolutely regrettable and I would not like to think that my recommendations might lead to such injuries, but we have to weigh up—using a cost-benefit equation—which would be the more serious and systemic welfare breach. For that reason, my view is that no exemptions should be made. If we were minded to make exemptions, they should be for named breeders, specific litters and known purchasers. Perhaps that would get round the problem of tail injury.

Elaine Smith: That might also be a bit complicated.

Libby Anderson: It might.

Elaine Smith: Surely the legislation should be clear.

Libby Anderson: The bill will ban mutilations but provide for exemptions, which will be made through regulations.

Elaine Smith: The section that will ban mutilation seems to ban castration, but regulations will deal with that. Is that correct? Siobhan Mullan is nodding.

Siobhan Mullan: That is my interpretation. Any mutilation will be banned.

Elaine Smith: The explanatory notes refer to "Normal farming practices such as castration".

How will the provision apply to domestic animals such as cats?

Siobhan Mullan: Castration will be banned unless it is specifically exempted.

Elaine Smith: Will cats be exempted?

Siobhan Mullan: I presume so. You will have to ask the minister about that.

Elaine Smith: It is not our job to presume, but to bring out the evidence.

Siobhan Mullan: The bill will impose an absolute ban.

Libby Anderson: I think that the Veterinary Surgeons Act 1966 contains a list of exempted procedures—will Siobhan Mullan confirm that?

Siobhan Mullan: Castration is still considered to be mutilation.

Libby Anderson: Castration is still considered to be mutilation, but it is permitted. We are going into detail that we are not sure about.

Elaine Smith: Perhaps we will discuss the issue with the minister.

Siobhan Mullan: You will have to ask the minister; I do not think that what Libby Anderson said is necessarily true.

Libby Anderson: A list could be made that covered accepted procedures, which would obviously include neutering.

Elaine Smith: In her submission, Libby Anderson says of section 22, on ensuring the welfare of animals, that

"This double qualification appears unduly weak."

Will you expand on that? Why is it weak? What would you have instead?

Libby Anderson: Could I quickly make a correction to my paper, although it does not relate to that question? In paragraph 6.5, I said:

"the offence of omission has been deleted from the original 17(1) (and from Section 22(1) on the duty of care)".

I am sorry—that is an error, for which I apologise to the committee and the bill team, who have probably scratched their heads over that.

I return to the provision on welfare. First, it is excellent to place responsibility on the people who are in charge of animals. My comment is on the only matter that I wondered about. A person must not fail to

"take such steps as are reasonable"

and an animal's needs must be

"met to the extent required by good practice",

which, I have no doubt, depends on the codes that will emerge. Offences include acts that are undertaken without reasonable excuse. The New Zealand Animal Welfare Act 1999, for example, refers to a mental element. The bill could specify

"such steps as are reasonable"

or

"the extent required by good practice".

Otherwise, the provisions are duplication.

Elaine Smith: Is the wording superfluous or contradictory? Does it do any harm?

Libby Anderson: The more defences that are provided under the bill, the more people will argue that they have not treated their animals inappropriately.

Elaine Smith: Is that why you say that the provision is "unduly weak"?

Libby Anderson: Yes. It was felt that too many defences were written into the New Zealand act. Perhaps just one qualification is sufficient.

Elaine Smith: Convener, may I move on to the question for Siobhan Mullan about unnecessary suffering?

The Convener: Does Maureen Macmillan want to come in on this point?

Maureen Macmillan (Highlands and Islands)

(Lab): Yes. I will come in on mutilations, if Elaine Smith does not mind. I will pick up on a point about working dogs that was given in evidence before Christmas. The problem is how to ensure that a puppy that is to have its tail docked is genuinely a working dog and not just a dog of the same breed. It was suggested that the best way to do that would be for the matter to be in the hands of the local vet. The local vet will know to whom working dogs belong and who are breeders who might sell dogs as pets. Would that be a strong enough sanction against unnecessary docking?

Libby Anderson: If the committee is minded to make any exemptions, it would be better to have a register of breeders.

Maureen Macmillan: Does Siobhan Mullen agree?

Siobhan Mullan: My only concern about that suggestion has arisen already: the rules might be bent because some vets are clearly in favour of docking. For example, one way of getting round the rules might be for one puppy from a litter to become a working dog. On the whole, vets have a good idea of whether their clients' dogs are working dogs. One advantage of the suggested approach is that if it was up to the vet, at least the animals would be seen by a vet, which may not otherwise always necessarily be the case.

Nora Radcliffe (Gordon) (LD): I should probably have asked the vets this question. It seems to me that if there is to be a tightly drawn exemption it will be necessary to identify the eventual owner of the dog. Identification of the owner probably does not happen until the dog is ready to leave its mother, but it might be desirable to dock its tail when the dog is less than a week old, if one accepts that the dog does not feel the same pain when it is less than a week old. If we accept that pain is a factor at a very young age, might the exemption cover docking under anaesthetic when the dog is slightly older and when the owner is known? How would that change the balance of pros and cons?

Siobhan Mullan: My opinion is that docking its tail is painful for a puppy. It is potentially more painful for a puppy than for an adult dog; the puppy's neurological system does not include pain-damping effects because that function has not yet developed. The question is whether that harm is greater than the harm that is caused by bringing an animal in and giving it an anaesthetic, which is potentially risky because at that point there is certainly much more to do. Later docking would perhaps be more harmful but, having said that, that approach might be a good way in which to reduce the numbers that are eventually docked.

Nora Radcliffe: At what age, by and large, is a puppy's owner known?

Siobhan Mullan: That is usually known when the puppy is aged eight to 12 weeks.

Nora Radcliffe: So it is still not an adult dog.

Siobhan Mullan: No.

Nora Radcliffe: Has it passed the stage at which the neurological effect—

Siobhan Mullan: A general anaesthetic would be required.

Nora Radcliffe: For a very young animal, that could be—

Siobhan Mullan: Yes. Such factors must be weighed up.

I will make one more point about mutilations. I approach the issue from a slightly different angle. I can understand why we might weigh the level of pain at different times against the benefits of avoiding future pain and so on, but I feel strongly that we need to consider the issue in terms of whether docking is something that is integral to the animal. Is it central to the dogginess of the dog—the telos of the animal? If it is, is that something that we want to protect? Is it important for us to keep those dogs as the dogs that we imagine? If we take that first step of thinking that that is important, the issue of weighing up future harms and so on is much less relevant.

Quite a few studies have examined countries where docking of dogs' tails has not happened for a long time, and it has shown that there is not a great incidence of tail injuries among dogs whose tails would previously have been docked.

The Convener: Do you have that evidence? Contrary evidence has been submitted to the committee after a previous meeting when I asked about the issue. What is the comparison with countries in which tail docking has been banned? What has been the impact, particularly on the working dog population?

11:15

Siobhan Mullan: I can certainly find that evidence for you.

The Convener: That would be helpful.

Siobhan Mullan: The specific issue on working dogs is really about feathered dogs—it is not about a pointer wagging its tail against a coffee table. That can be sorted out. Why cannot we just clip feathered dogs? That is a simple and straightforward procedure that leaves the tail intact for the dog to use as a signal.

Libby Anderson: I agree. I also agree with Siobhan Mullan's point about the integrity of the animal. My only concern is that when a dog is injured in the field, it will not be too worried at that point about its dogginess. However, it is an important point of principle.

Mr Ruskell: We heard some concerns that, if Scotland and England and Wales end up with different legislation on mutilation, people will just drive over the border and have their dogs' tails docked there. What is the evidence on boundary issues from Europe? Inevitably, there is different legislation in different countries. Will you expand on what might happen if we have different legislation to England and Wales?

Libby Anderson: Do you mean specifically with regard to tail docking?

Mr Ruskell: I mean with regard to mutilations.

Libby Anderson: I am not sure, I am afraid. I would have to look that up.

Siobhan Mullan: More and more European countries are banning the practice. Originally, it was banned only in the Scandinavian countries, but in the past 20 years such bans have spread. However, given people's keenness to have docked dogs, I have no doubt that people will drive over the border. There is an issue about enforcement, but if MSPs and people in Scotland want a ban, it is important to include that in the bill. The cross-border issue should not be a reason to omit a ban.

Elaine Smith: I have a question for Siobhan Mullan on unnecessary suffering. In your submission, you discuss “reasonableness” and state that it is

“difficult to move away from what is common practice”.

In paragraph 8, you state:

“it would be difficult to see how some of the husbandry methods that cause suffering and have been banned in other EU countries continue to be ‘necessary’ in the UK except that these methods are common practice.”

Will you expand on that and perhaps give us some examples? The point is also made in Libby Anderson’s paper, in which she states that the system of intensive rearing of pigs leads to a requirement for tail docking. I suppose that a question arises about whether that affects the pigginess of the pig—all the issues start to interrelate.

Siobhan Mullan: It might be helpful to start with an example from the UK. Until relatively recently, all piglets were castrated, but now, as a result not of legislation but of one of the farm assurance schemes, almost no piglets are castrated. People want to be part of the scheme, and castration is not allowed under it. Castration was a common practice but, almost overnight, it was shown that it was not necessary, so there has been a big change.

In Scandinavian countries, the use of farrowing crates is permitted only for one week. In Switzerland, they are not permitted at all and there are free-farrowing systems. Some countries have brought in regulations against what we know as the battery cage prior to the European Union’s 2012-20 plan—those countries are leading the way.

Elaine Smith: Do you mean that the bill may outlaw some of those practices, but that people will expect to continue to use them, despite the fact that they will be breaking the law?

Siobhan Mullan: I suppose that something being common practice is an excuse in a way, because it is seen as reasonable to do what everybody else does. The intention may be to improve welfare, but basically there will be no improvement if welfare is bad across the board. Bad welfare will simply be standard practice.

Elaine Smith: What should be done?

Siobhan Mullan: Under the New Zealand act, the welfare of animals is ensured because they must be treated in accordance with good practice and in the light of scientific knowledge. Something about scientific knowledge could be included in the bill so that people cannot simply say, “Well, we’ve always done this.” Piglet mortality rates in systems and the fact that certain practices are unnecessary could be illustrated. That would be helpful.

Elaine Smith: If people stopped intensively rearing pigs, tail docking might not be required. I suppose that that relates to the point that Libby Anderson made.

Siobhan Mullan: Yes—assuming that there is scientific knowledge to prove that. There is increasing knowledge about farrowing crates. If everything is weighed up—not only crushed piglets, but other forms of piglet mortality and so on—and there are smaller litters so that there are fewer weak piglets, it will be found that mortality rates and the number of live pigs that can be sold at the end of the day under farrowing-crate and free-farrowing systems will be pretty similar.

Elaine Smith: Are you suggesting that the bill should be changed to include such a provision?

Siobhan Mullan: It would be useful to have something in the bill about practices being in accordance with scientific knowledge.

Nora Radcliffe: I want to ask two questions. First, an earlier witness suggested that inspectors should be allowed recourse to something like a care order that would give people a chance to amend their behaviour to look after their animals properly. Do you want to comment on that suggestion?

Libby Anderson: The value of care notices is that they allow rapid intervention. The system that we would have would be analogous to that under the welfare of farmed animals regulations, in which there are care notices. Such a system would allow for rapid intervention to bring welfare up to a good standard.

I am trying to remember what the New Zealand act says about care notices. It requires an application to a court, so the process is not quick. The equivalent Austrian act does not contain a specific provision, but an inspector can require that standards be improved. The system that we envisage would be analogous to that under the farmed animals regulations. It would allow rapid intervention and much more prevention. I think that such a system is generally supported.

Siobhan Mullan: I support what has been said. The system that has been described has worked well so far; companion animals and farm animals would be brought to the same level. We should try to prevent issues being dealt with by the courts and to improve matters before that stage is reached.

Nora Radcliffe: Who should be inspectors, how should they be trained and should there be a qualification standard or different qualification standards?

Siobhan Mullan: I do not have too much to say about that. Whether inspectors come from a charity, a local authority or whether they are vets

does not matter too much, but a minimum level of competence will be needed, for which there should obviously be an assessment system. Perhaps there should be a register. Across the board, some local authority inspectors are very good, but others are not so knowledgeable. Some use the vets in their area to do the job. It is not necessary for an inspector to be a specific type of person or to have a specific competency level. Different competency levels would be needed for the different matters that inspectors would have to deal with.

Libby Anderson: It would be helpful to have a framework of competencies. The inspectors that are envisaged under the bill are the state veterinary service, the local authorities and the Scottish Society for the Prevention of Cruelty to Animals. Individual inspectors would be authorised, but it is not clear to me how the work will be divided and I am not sure what the difference is between the investigations and inspections that the bill envisages.

That said, there should be a consistent approach. Local authorities have been somewhat unfairly criticised in some of the previous witness sessions. The authorities have qualifications as well as a trading standards certificate in animal welfare, which is the sort of objective certification that could be applied. The SSPCA has extensive training procedures. Other organisations help local authorities and interact with them. That could be codified to provide us with a national approach, which would be very helpful.

The Convener: Okay. This has been very useful; it was useful for members to ask a range of overview questions as well as to dive into the detail. I thank you very much for attending and for your advance evidence.

11:26

Meeting suspended.

11:28

On resuming—

The Convener: I welcome Ross Finnie, the Minister for Environment and Rural Development, and his officials. You will be aware that we have been interrogating the bill for some time now. I hope that you have been kept up to speed with that. We have quite a few questions for you. However, before we get to our questions, do you want to make a brief opening statement and introduce your officials?

The Minister for Environment and Rural Development (Ross Finnie): Thank you, convener. Because we are dealing with health and welfare, we are well represented across the piece. With me are Charles Milne, who is the chief

veterinary officer for Scotland; Claire McGill and John Paterson, who are from the solicitors division; and Neil Ritchie and Ian Strachan, who are from the animal health and welfare strategy branch.

I want to make some very brief remarks, as the committee has been interrogating the bill for quite a substantial time and is familiar with the issues. My reading of the evidence is that there has been widespread support for the principles of the bill and that it has received a very positive reaction. That is largely because the bill will, for the first time, introduce an enforceable duty to ensure the welfare of animals and to bring the law on pets up to date with the law on farmed livestock. It will bring together and simplify more than 20 pieces of legislation, some of which are very old indeed. It will enhance the Scottish Executive's powers to respond to an outbreak of a fast-spreading animal disease.

11:30

Given that I have been watching the committee carefully and reading the *Official Report*, it might be helpful if I make a couple of remarks about my reaction to some of the issues that have been raised. Some people consider that the powers should be subject to greater constraints. In particular, it has been suggested that the wording of the slaughter powers is so broad as to make it virtually impossible for them to be challenged in the courts. I take issue with that interpretation because although there is no statutory right of appeal against the exercise of powers under the Animal Health Act 1981, judicial review is available to challenge any decision to exercise those powers. In the health part of the bill, the Scottish ministers may, if they think fit, cause animals to be slaughtered with a view to preventing the spread of disease. I put it to committee members that although the powers of slaughter in new schedule 3A to the 1981 act are undoubtedly wide, they can be exercised only with a view to preventing the spread of a disease and in a manner that is proportionate and reasonable and which respects human rights. It therefore seems incorrect to suggest that judicial review could not be mounted.

A number of persons have suggested that ministers should be compelled to seek veterinary or other advice prior to exercising those powers. It is inconceivable that a minister would exercise a random power of slaughter without taking advice from somebody. However, my concern for the drafting of the bill is more that it is not just the advice of the chief vet that one might have to seek, because the nature of the disease might involve a number of scientific bodies. There might be other elements, particularly if the disease has been trawled through the World Health

Organisation, the European Commission or the European Parliament. I believe that people must trust that ministers will not randomly seek to slaughter animals. It would be extremely difficult to try to put into the bill an inclusive list of all the persons to whom a minister might have recourse.

I also want to clarify the biosecurity codes position. It has been put to members that including both mandatory and discretionary best practice is confusing. The importance of good biosecurity simply cannot be overemphasised and there remains evidence that animal keepers are failing to take adequate biosecurity measures to protect against the incursion of animal disease. The bill requires that the industry and other related interests be consulted on the detail of the proposed codes and, by working jointly on those, we will make clear the circumstances in which mandatory measures apply.

Moving to animal welfare, there has been some discussion in evidence about the definition of a "protected animal". The term

"under the control of man"

implies a broader spectrum of control than the traditional concept of a person being responsible for an animal. It covers the various interactions that man might have with an animal, which can include owning, keeping, caring for or even trapping an animal. Defining that term further in the bill is not likely to aid interpretation. More worrying, it could risk excluding situations that ought to be included in the scope and mischief of the bill.

I emphasise that wild animals living in the wild are not covered by the scope of the bill, but are covered by other legislation. The bill will not affect the traditional sport of shooting animals such as deer or pheasants in the wild because they do not fall within the definition of protected animals. Although those animals are commonly domesticated in the British isles, they are not under the control of man and live in the wild at the time of shooting and are therefore outside the scope of the bill. The bill will, however, cover wild animals such as pheasants during any period that they spend under the control of man prior to the release into the wild.

I know that the committee heard suggestions in earlier evidence sessions that it would be sensible if the new provisions for securing welfare, which are in section 23, provided inspectors with the power to issue a care or improvement notice in situations in which they considered that an animal's needs were not being met. When that suggestion was first made at an event in the Parliament some time ago, I was initially attracted to the idea, so I listened carefully when the proposal was suggested to the committee.

I genuinely believe that such a measure would support the bill's central principle on the duty of care, as it would allow us to seek to educate and inform the public of their duty to ensure the welfare of animals for which they are responsible. Therefore, if the Parliament agrees to the principles of the bill, I intend to lodge an amendment at stage 2 to enable inspectors to issue care or improvement notices. I have no doubt that such a measure, coupled with the duty of care, will send the clear message that unnecessary suffering is abhorrent and that, in the 21st century, human responsibility for animal welfare will be actively promoted, nurtured and recognised in Scotland.

I hope that my comments have been constructive and of assistance. I will be delighted to take the many questions that committee members no doubt wish to raise.

The Convener: Thank you. We were particularly keen to hear the minister's commitment to lodge an amendment to the bill to provide for care or improvement notices. I think that all members will welcome such a move. The issue has certainly been raised by a few witnesses and was discussed again this morning.

Richard Lochhead (North East Scotland) (SNP): As the minister mentioned, the powers of slaughter have been a cause of some concern. One theme in the evidence that we have received has been the need to balance the emergency powers that will be given to ministers with the need to hold ministers to account on their use of those wide-ranging powers. I am concerned about the nature of the advice that the minister would receive. I accept that, as he said in his opening remarks, he might need to take advice from person X, Y or Z, but there is some ambiguity about the persons from whom he would need to take advice in such circumstances. One source of concern is that people are not sure about the extent to which the minister would be required to take advice from certain bodies and organisations and the extent to which such advice might be published and be subject to challenge.

My second question is about the ministerial power to slaughter animals to prevent the spread of disease. The minister will be able to slaughter any animals he thinks fit, including wild animals, regardless of whether the animals have been affected by the disease. The minister will no doubt accept that embarking on the slaughter of wild animal populations could have huge ramifications for Scotland. Images of wild animal populations being slaughtered could have an impact on tourism, but such a slaughter could also have an impact on rare breeds and rare species. Given that the power is so wide-ranging, will the minister explain under what circumstances he envisages

the power would be used? Before he took a radical decision to slaughter wild animal populations, what advice would he take? To what extent would the Parliament be consulted?

Ross Finnie: Richard Lochhead raises several issues. I fully appreciate that how we control disease outbreaks is extraordinarily important. The way in which ministers exercise the broad powers that are proposed in the bill is a serious matter. Fundamentally, ministers understand that, in introducing legislation that seeks to provide them with such wide powers, they must be clear about what responsibilities they are taking on. However, we should be clear about the fact that the powers are for dealing principally with a range of exotic diseases, which are not confined to the most recent example of foot-and-mouth. Scotland could be susceptible to a range of exotic diseases.

As I said, it seems clear to me that the person who will most likely tender advice on precisely how we should deal with a particular exotic disease that has, regrettably, been found in Scotland is principally the chief vet. The nature of the disease may be such that we also need to take advice on the scientific evidence from the chief scientist in Scotland and, given that the United Kingdom is a single epidemiological unit, on a UK basis too. It may also be the case that the nature of the disease—for example, the way in which it has spread or its source—is such that the European Commission Standing Veterinary Committee or the World Health Organisation will have a role to play. The advice that ministers seek will depend on the disease with which they are dealing. It will be incumbent on ministers to listen to those people who have demonstrable expertise on the disease before coming to a view on exercising whatever powers are necessary.

Depending on the nature of the disease, it may well be possible, mercifully, to have recourse to vaccination. That option may be open to ministers, but there are some exotic diseases that cannot be controlled by vaccination. That is why ministers must have a broad power. Such diseases move incredibly swiftly. As the minister who was in charge during the foot-and-mouth outbreak, I can say that from personal experience. During that outbreak, I would attend a meeting every morning, not to direct the slaughtering of animals but to listen to the chief vet and to other scientific advice from people who were properly qualified, to find out what their best judgment was on where and when to authorise the necessary decisions. Ultimately, I had to be responsible to Parliament for the actions that were taken.

My difficulty is how all that could be expressed in the bill. The danger is that if we listed some but not all of the people to be consulted, at the outset of an outbreak we could get into a legal dispute

about who had consulted whom while the disease was spreading and posing a threat to wild animals. The quicker one can act to contain a disease, the better. Although it may be highly regrettable that any animal has to be slaughtered, ultimately we are seeking to terminate the spread of disease swiftly so that it does not spread to a wider population.

During the foot-and-mouth outbreak, especially in the south of Scotland, one of the key pieces of advice that came to the fore was that farmers should try to keep their cattle indoors. Members may recall that at the time of the outbreak substantial numbers of cattle were still indoors. It was imperative that veterinary staff and other animal health people sought to ensure that those animals were not infected. Although, unfortunately, we failed to do that in some cases, by and large the cattle stock was preserved. If the disease had spread into the herd that was being kept indoors, we would have been in even bigger trouble. That is the fundamental point.

I can understand where Richard Lochhead is coming from when he says that the proposed powers are draconian but, frankly, if one is to deal effectively with a fast-moving and highly contagious disease, one must have the necessary range of tools and take advice from those who know what they are talking about. I appreciate the member's fear, but do not accept his suggestion that ministers would authorise slaughter randomly. I do not think that anyone of any political colour or persuasion would carry out such action.

Richard Lochhead: I accept much of what the minister says. I guess that should such awful circumstances ever arise, transparency would be of the utmost importance in ensuring that Parliament understood what advice was sought and was involved in that process and in assessing how the advice was responded to. The committee will no doubt deal with those issues in its report.

There is one other issue on the evidence that we have received that I want to raise. It has come to our attention that the definition of which animals will be covered by part 2 of the bill, which is on animal welfare, is limited to vertebrates. The minister will be aware that there has been some suggestion that that definition should be widened and that the inclusion of invertebrates and other animals such as lobsters and crabs should be considered because of emerging evidence that they may experience pain and suffering. The committee has received conflicting evidence, so it will be interesting to hear whether the minister agrees that there is growing evidence that such animals experience pain and suffering. If those animals were included in the bill, how could the way in which lobsters were killed or cooked be policed without having an inspector in every

kitchen and restaurant in the land? The committee is addressing that debate. How does the minister intend to respond to it?

11:45

Ross Finnie: There is a growing body of evidence on the issue of such animals' ability to feel pain. However, I respectfully suggest that that evidence is, at best, inconclusive. I may ask Charles Milne to elaborate on the issue in a moment. Because the evidence is inconclusive, we need to consider the purpose of the legislation. The purpose of the legislation is to create a criminal offence, the test for which will be proof beyond reasonable doubt. I do not think that we can legislate to create a criminal offence when there is fundamental doubt about whether the species to which the offence relates experience pain in the way that has been described. It is not responsible to extend the scope of the bill to include such species when we have already built in the possibility that we would be unable to proceed with a criminal prosecution. That would make the bill a meaningless piece of legislation. I would like the chief veterinary officer to give his opinion on the issue that Richard Lochhead has raised.

Charles Milne (Scottish Executive Environment and Rural Affairs Department): The question revolves around whether such animals consciously experience pain. We accept that they have nociceptors and that they can sense more than stimuli. However, the question whether they have the ability to suffer pain, which is a conscious process, is altogether different. It is right to say that the scientific jury is still out on that question.

It is fair to say that invertebrates and mammals separated a long time ago in evolutionary terms and have followed different development pathways. Scientific opinion is that consciousness has developed in vertebrates since that separation. That is not to say that consciousness could not have developed separately in invertebrates, but to date there is no evidence that they have the neural structures that we have that enable us consciously to experience pain. I can give some examples of that. In humans, the seat of consciousness is the neocortex which, as its name implies, is quite a recent development. Individuals who have damage to the neocortex can sense noxious stimuli but do not experience an unpleasant sensation of pain. Unless animals have that neural ability and consciousness, having the ability to nocicept—to sense noxious stimuli—does not necessarily mean that they have the ability to sense pain.

We need to do further work on invertebrate species to determine whether they have the

neurological capability of consciousness. Various physiological experiments could also be done to determine whether they show behaviour that would indicate that they have a conscious state. Such evidence is not yet complete.

The Convener: I understand that scientific judgment can change over time and evidence can develop. There is already debate about the issue. The evidence that we have received indicates that some would argue that the case has been made, although you say that there is disagreement. I understand that, under the bill, should you or the minister take a different view, there is provision to use secondary legislation to introduce measures that would change the position. The bill allows for a future change of view.

Ross Finnie: That is absolutely correct. It is nonsense to say that almost anything that we do politically is set in stone. That is a rather foolish position to take. Richard Lochhead asked me a direct question about the bill as it stands. My position is that it is impossible for me or anyone else to prosecute a case when the chief vet, if led in evidence, would suggest that, although there are issues to be resolved, those issues are not yet resolved. However, you are right to say that, if the position developed and a different view and body of evidence emerged, we would not have to have recourse to primary legislation to make a change, because the provisions will be in secondary legislation.

Nora Radcliffe: What on-going investigation is there in this field? Do you know of any on-going experimentation?

Charles Milne: Work is being done, although I could not quote you the individual pieces of work.

Ross Finnie: If that work were to develop, two issues would arise. Particularly in the case of lobsters, the issue of whether the issue was a welfare one per se or came within the ambit of slaughter regulations would arise. At the moment, such species are excluded from slaughter regulations simply because they do not meet the tests to which the chief vet has alluded. We should not confuse slaughter to prevent the occurrence of disease and the slaughter of animals that are being bred or used for human consumption. Essentially, the bill does not address slaughter immediately prior to the point of human consumption.

Maureen Macmillan: Perhaps we could discuss mutilations, which you did not mention in your opening remarks. We have probably received more evidence on that than on any other part of the bill. There seems to be some confusion about whether standard farming practices, such as the tail docking and castration of lambs, will be allowed under section 18. Questions have been

raised about whether such practices should be allowed or whether the standard practices should be changed. For example, the docking of pigs' tails might not be necessary if farrowing crates were made illegal. There is a question as to whether the mutilations are of benefit to farmed animals or whether there are other ways of addressing the problems that those mutilations are supposed to solve.

There is also the question of the docking of dogs' tails. We have had conflicting evidence about whether extremely young puppies can feel pain and about when tails should be docked, if they should be docked at all. Obviously, interest has centred on working dogs and how we define them. If the docking of working dogs' tails is allowed, how can we ensure that it is not the breed that is exempted but only those members of that breed that are genuine working dogs? Could you give me your thoughts on those issues?

Ross Finnie: I am sorry that I did not raise the issue earlier. However, perhaps it is better that it was raised specifically in a question.

Current farm practices, including castration, are not prevented by the bill. The position is that although, as always, there is a range of opinions suggesting that there might be other practices that could be used, the evidence that was before me when I approved the bill did not enable us to find satisfactory alternatives to the present practices. Charles Milne might want to elaborate on that.

The opinions of the chief vet and of vets in general support our view that the issue of the docking of dogs' tails is to do not only with pain but with the function that the tail is intended to perform for a dog. We are absolutely clear that the serious evidence is that the issue should not be decided by what people think a breed should look like. A dog was intended to have a tail and we wish to ban the practice of tail docking. Although I know that our view is not binding on vets, it is important to note that for quite some time the leading veterinary associations have not supported tail docking. Exemptions will not be on a breed basis. Ian Strachan might wish to elaborate on that. We will not grant blanket exemptions; they will almost be made litter by litter according to the work in which animals will engage.

Maureen Macmillan: Are you considering registration of breeders who raise dogs for work?

Ian Strachan (Scottish Executive Environment and Rural Affairs Department): We have not considered registering breeders of working dogs. We considered ensuring that the vet who conducted the docking operation had seen evidence and was satisfied that the pups from litters had a very good chance of being working dogs. Evidence that we thought of might include

the fact that a breeder was a member of a gun club or held a shotgun licence and could show that he went out sport shooting.

The minister was right to say—and I emphasise this point—that any exemption that we intend to make will not be on a breed basis. I listened carefully to the evidence that the committee took this morning and I fully accept that it is impossible to identify which pups from a litter will end up as working dogs, so we think that the compromise must be to work on a litter-by-litter basis.

Maureen Macmillan: I will press the minister on farmed animals. Is there a case for changing some farming practice so that mutilation of pigs, for example, is no longer necessary?

Ross Finnie: As I said in my initial reply, I accept that some people take that view, but a balance is involved. Charles Milne will answer the specific point.

Charles Milne: Maureen Macmillan mentioned docking of pigs' tails. Existing legislation requires pig owners not to dock, unless not docking would create a problem. Of course, pigs explore with their mouths. On farms where docking does not occur, significant injury to tails and significant carcase damage occasionally occur, so tail docking is the lesser of two evils and it continues.

The Scottish Executive Environment and Rural Affairs Department has funded a vast amount of research on various mutilations of farm animals and particularly on how we could use anaesthetics or different techniques to reduce pain when lambs' tails must be docked. We also take advice from the Farm Animal Welfare Council, which is an independent organisation that advises us on welfare issues, including mutilations. In a raft of ways, we receive advice that can impact on our legislation.

Maureen Macmillan: Do free-range pigs bite one another's tails or does that happen only when pigs are intensively farmed?

Charles Milne: Free-range pigs can do that. The situation is complicated. Pigs may bite tails in systems that have excellent management and all sorts of enrichment but not bite tails in poor systems. As I said, the existing legislation says that farmers should not dock tails unless there is a problem. We must accept that considerable welfare problems are associated with pigs. In the extreme case, when tail biting progresses to the ultimate extent, cannibalism can occur. Ideally, we do not want tail docking to be undertaken. In some respects, allowing it in pigs and lambs but not in puppies is an anomaly. However, we must balance the good to the animal against the injury to it. In such circumstances, there is a strong argument that docking alleviates suffering.

Maureen Macmillan: Do you foresee difficulties if the law in Scotland on tail docking of dogs is different from that in the rest of the UK? Will people use facilities in England when they want tails to be docked cosmetically?

12:00

Ross Finnie: Yes, I do, which is unfortunate. Clearly, the matter can be determined on the basis of the evidence that the committee has, but as you are aware, Westminster will decide the issue on a free vote. I will not explore the conscience issue, convenor; I will leave that for your deliberation.

The Convener: That would be wise.

Ross Finnie: I thought that I would strike a happy note by making that suggestion.

The problem concerns me, but I do not have any immediate solutions. The position came as a bit of a surprise because our earlier intelligence said that the provision in the English bill would mirror ours. We may know what will happen by the end of this week, because the vote may have taken place. I am always unhappy about passing legislation that has obvious routes for people to obviate the intention of the law. I do not wish to fly any kites during the committee meeting, but your question deals with a matter that exercises me, and my officials will consider whether there are measures that could dissuade people from taking advantage of the situation.

The Convener: That might be worth considering over the next few weeks, in advance of the stage 2 discussions.

Ross Finnie: I am sorry; I mean that we will address it immediately. I do not mean that I will dwell on the matter. There are a number of possibilities, but I am reluctant to float them and have them leap out as real possibilities because they might not be sensible for legal and drafting reasons. However, we are addressing the matter.

The Convener: The issue has come up in several evidence sessions in which we have discussed the position in the UK and the comparable situation on the continent. It would help if you could give us that feedback by stage 2.

Ross Finnie: There is evidence on that.

Mr Brocklebank: I am sure that sporting interests are encouraged to hear that the bill is in no way intended as a covert attack on those in Scotland who are interested in shooting wild game, stalking deer and shooting pheasants. You defined a wild animal as an animal that was wild when it was killed. However, the difficulty is that pheasants and deer are sometimes under the control of man—young pheasants are reared in cages and deer may be fed to see them through a

bad winter. Will not there be difficulties, particularly in respect of the section on abandonment, in establishing when a wild animal is under the control of humans and when it is in the wild and free of that control?

Ross Finnie: You would expect me to say no, which is what I will do, but I will also elaborate. This is not about pandering to shooting interests or to anybody else. It is about taking a pragmatic view and having a statute that properly addresses the position of animals that are controlled by the humans who have a clear responsibility for them, so that, if necessary, we can direct a criminal charge on a burden of proof and secure a prosecution. Pheasants are under human control when they are being reared, and they are released on the basis that they are in the physical condition to look after themselves. Regardless of the bill, a body of case law suggests that in determining that condition there is no conflict with your point about control. We are satisfied that the bill does not cut across that.

Mr Brocklebank: We have heard evidence that even for a period after animals are released into the wild, they often require a degree of support. To that extent, the animals are still under the control of the people who have reared them.

Ross Finnie: I am reluctant to get into that. It is a bit like asking when is a door not a door—when does released not mean released? It is an interesting question. Perhaps John Paterson would like to assist with the definition.

The Convener: That would be useful, because the issue has come up week after week. It is about what happens in the winter a year after the animals have been released.

Ross Finnie: With respect, that is different. If one is actually controlling them, that is slightly different.

The Convener: That is what we want to tease out. It has not been treated as totally separate in previous evidence sessions.

John Paterson (Scottish Executive Legal and Parliamentary Services): Our view is that, if one puts out food for the birds, they are clearly not under the control of man and one is not responsible for them. The same applies to deer. However, a question arises if someone releases pheasants that they reared. Is that person releasing the pheasants or abandoning them? It appears to us that the question is answered by the fact that the young birds are not dependent on the person who is releasing them at the point at which they are released.

If someone takes a cage of young chicks that cannot support themselves, sets them down in a field and walks away, that would be abandonment.

On the other hand, if they are released at a stage of rearing when they are able to fend for themselves, that would not be abandonment because the person would not be disregarding their responsibility for the chicks. People are responsible until the point of release, but at that point the animals become wild. There might be a short transitional phase during which someone is still feeding them, but essentially they are wild.

Rob Gibson: Many people are particularly concerned about deer. I heard what the minister said, but we took evidence earlier about altering the immediate environment of wild deer—for example, by fencing them in to prevent them from crossing a road. Another issue is whether feeding deer in the winter makes them dependent. Are you clear that the people who will have to comply with the legislation will know exactly where they stand?

Ross Finnie: It depends on what one wishes to do. As John Paterson said, if one wishes as a matter of humanity to provide additional support and protection for the animals but they are still capable of looking after themselves, what is the risk? Someone who did that would not be liable to the accusation that they had committed a criminal offence.

Rob Gibson: So the important point is the degree of protection.

Ross Finnie: No.

Rob Gibson: That is why I wondered—

Ross Finnie: I understand that there are practices that confuse the issue, but on the point about how individual citizens will know that they are liable, our evidence makes it clear that a wild animal is protected only when it is being reared. After it has been through the rearing process and has been released, it is not protected.

Mr Brocklebank: There is one other anomaly that you might like to address. I understand that farmed fish are dealt with under the bill, but what about managed fish? That includes, for example, lochs that are stocked with trout. To all intents and purposes, the fish are wild until somebody catches them. Are they covered by the bill?

Ross Finnie: If someone is deemed to have bred the fish, yes, but they would not be covered at the point at which they are released into the pond, when one assumes that they are capable of looking after themselves.

Ian Strachan: I will expand on that a little. It would depend on the individual circumstances such as the number of fish in the pond and the size of the pond. You heard evidence earlier that the pond could be several acres. If someone released a few fish into that pond for sport fishing and they were able to fend for themselves, they would be, in effect, wild animals and would not fall

within the scope of the bill. If, on the other hand, the pond was really not much more than a big quarry, and a large number of fish were released into it, which were not able to sustain themselves and required supplementary feeding, that could be viewed as a type of fish farming—of a “catch your own” rather than “pick your own” type. Such fish would be protected animals, because they would be under the control of man. It is not possible to say whether fish in a stocked pond are covered; that will depend on the circumstances.

The Convener: Presumably best practice will be set out. What you have explained sounds like common sense, but people will have to make decisions based on individual circumstances. Translating the detail of the bill into best practice advice will be critical in letting people know where they stand.

Ross Finnie: Yes; there will be guidance.

Mr Ruskell: I want to return to the issue of ministerial slaughter powers. I accept totally what you said about the need to move swiftly in an epidemic, such as foot-and-mouth, but you also said that there are checks and balances in the system based on judicial review of whether your or your successors' decisions are proportionate and reasonable and respect human rights.

Surely we should try to avoid having a judicial review in the middle of a disease outbreak, when we are trying to move swiftly. The most appropriate way forward would be to ensure that you draw on adequate advice, whether veterinary or scientific, to try to avoid having numerous judicial reviews during a disease outbreak.

You said that you would definitely contact and take advice from veterinary and scientific bodies during the outbreak of a disease. What would be the problem with including those stakeholders in a protocol or requiring such a protocol to be established through the bill? I am not saying that we should name organisations in the bill, but what would be the problem with establishing in the bill a framework, protocol or process for consulting them?

Ross Finnie: I do not think that we could ever prescribe something that would deny any citizen the right to seek a judicial review. Irrespective of what we might do to eliminate the possibility of that, we will never eliminate it; people have the right of recourse to the court.

The advice taken would depend on the nature of the outbreak. For example, during the foot-and-mouth disease outbreak, it was regrettable that some herds of cattle were caught by the provisions used. They were also caught by the BSE regulations, which are about not slaughter but disposal and whether the BSE prions might be released by the use of pyres, which we were

regrettably still having to use. One would not wish to have recourse to using pyres but, in those circumstances, we did. That brought in a range of potential consultees. We had to move extraordinarily quickly to deal with the BSE committees, which involved the Scottish Environment Protection Agency and our taking veterinary advice.

I have difficulty in seeing what could be done in such circumstances if the objective is to give clear guidance that will not induce unnecessary court actions, because once one starts to be prescriptive about who is brought in, one opens oneself up to judicial review if someone believes that the list of consultees is not right. We had five judicial reviews in Scotland during the course of the foot-and-mouth outbreak, all of which had to be heard very quickly.

I understand where you are coming from, but I have great difficulty in seeing what could be done about that. During the foot-and-mouth crisis, what was important was that ministers made statements to Parliament setting out the principles of what they were seeking to do, how they were seeking to use their powers and how they had used them. That is accountability to Parliament.

12:15

Mr Ruskell: I understand the difficulty that you have highlighted about prescribing exactly who you would want to bring in, but what is important is that people know that there is a process for seeking stakeholders' advice, which you and your successors will stick to. At the moment, there is nothing that specifies that process, or even the need for that process, in the bill. That is why witnesses have described it as an act of faith. You are saying that it is inconceivable that you or any of your successors would not take such advice, but people out there are saying that it is an act of faith. Perhaps a process needs to be identified, rather than mentioning individual stakeholders in the bill.

Ross Finnie: I understand what you are saying about people's concerns about specific aspects of the bill, but I am trying to get my mind around how a minister could come to Parliament, as I did, to indicate that he or she was about to embark on a slaughter policy without specifying quite how that would be done. There are contingency plans that deal with how we would address such issues, and they mention the people who would be consulted. That is in the plan and those are the people that we would have to go to. I respectfully invite the committee to have a look at the contingency plan—a document in the public domain—which is the only document of which I am aware that describes how exotic diseases would be dealt with and the processes that would be used.

Mr Ruskell: There is clearly an issue to do with the statutory requirements and the legal expectations of the process that you or subsequent ministers would follow. My difficulty with the bill is that I do not see a requirement in it for any process to be followed.

Ross Finnie: There are difficulties in having a statutory process to cover a range of diseases. There is no question but that our view is that any minister who took a decision without advice in direct response to such a situation would be subject to judicial review and his chances of succeeding would be slim. That is the advice that a minister would get. You would have to be pretty wilful to disregard that. We would be in an extraordinary situation if there was a minister in any department who was getting advice and was wilfully ignoring it and saying, "I'm going to slaughter these animals and you'd just better watch me, because I'm about to issue the order," because they would have been told that there could be a judicial review.

Mr Ruskell: It seems that judicial reviews are being invited as part of that process.

My second question is on licensing of animal sanctuaries. It is your intention to license the 50 biggest animal sanctuaries in Scotland. What do you mean by "biggest"? Are those the animal sanctuaries that have the most need to be licensed in the short term? What is that decision based on?

Ross Finnie: The difficulty for us is that some people look after one or two animals or take in animals only occasionally. We need a cut-off point if we are to be able to impose effective strictures. The figure of 50 is a rough count that was based on the criteria that we used; it is not our intention simply to include 50 sanctuaries in the scheme. I ask Ian Strachan to elaborate.

Ian Strachan: I have been interested to read the evidence that has been given to the committee on animal sanctuaries. The bill's accompanying documents state that we intend to register—not license—animal sanctuaries. The provisions will be introduced in secondary legislation, but we will need to consult fully and take evidence on the advantages and disadvantages of registration and licensing. It may well be that we ought to license larger sanctuaries and register small ones. As the minister said, we are looking for a cut-off point because we want to avoid creating a bureaucratic necessity for people who take in a couple of stray cats or an injured hedgehog. At this stage, it is not possible to say that registration or licensing will be required for people who have more than a certain number of animals, because that could depend not just on the number but on the type of animals in the sanctuary. For instance, a donkey sanctuary with half a dozen animals may need to be licensed

or registered, but somebody who has a few stray cats or injured hedgehogs may not. We will need to consider those issues.

Mr Ruskell: That is a bit clearer. My concern was about small animal sanctuaries that can deal with species with complex needs, and the potential for them to go down the wrong path. I am glad to hear that complexity of needs is being brought into your criteria and that the issue will not just be the size of, or the number of animals in, a sanctuary.

Ian Strachan: Another good example is seal sanctuaries: if a person takes in half a dozen seals, it is arguable that there is a better case for licensing or registration for that than for somebody who takes in half a dozen small mammals.

The Convener: It is useful that that issue has been reflected on. One issue that was raised with us was about small sanctuaries which, through word of mouth or happenstance, end up becoming much bigger, but without the required expertise and back-up. By the time such sanctuaries are reported, the problem is already established. We are interested in having more background on the issue. The explanatory notes state that the

“registration requirements will be introduced in 2008”,

which means that we are a long way from the introduction of such a scheme.

Ross Finnie: The bill will make many fundamental changes and will for its implementation be dependent on a large number of statutory instruments. We do not want to get into a bind by saying that that will all happen tomorrow. Should the bill get through Parliament, we see our absolute priority as being to produce the statutory instruments that will update and restate all the existing legislative requirements, after which we will move progressively to the new provisions. Many of the reasons why we want to use statutory instruments have arisen this morning; for example, different scientific evidence and different circumstances might arise, so to use secondary legislation is the right course of action because it can be more easily amended. However, management of all that secondary legislation will place a strain on parliamentary time. If we can introduce the scheme more quickly, we will do so, but there are problems with that.

The Convener: That is a bit of advance notice for the committee.

Nora Radcliffe: Would it be sensible to provide that all sanctuaries be registered and thereafter to prioritise those which need to be licensed? As has been said, size is a blunt instrument. Is my suggestion feasible or practical?

Ross Finnie: As Ian Strachan said, we want to get this right. Clearly, when the relevant statutory instrument emerges, we will have to consult on it.

We note the suggestion, but I am not sure whether we will proceed in that way.

We must be clear that we do not mean big and small animals. The provision is about the issue that the convener raised, which is the nature of the species involved and the possibility that sanctuaries will grow and end up offering services for which they are not adequately provisioned, which could lead, quite inadvertently, to abuse of animals. We must look across species and size.

The Convener: I am keen for us to move on.

Nora Radcliffe: I have no more questions about sanctuaries, but I want to ask about a couple of issues that were raised by witnesses, the first of which is administration of poisons. Will the bill be adequate to protect horses from ragwort poisoning? The British Horse Society suggested that ragwort should be mentioned specifically in section 20.

Ross Finnie: The bill will make it an offence knowingly to give a horse feed that is contaminated with ragwort. The welfare element of the bill requires that the person who is responsible for a horse take appropriate action to prevent the horse from eating ragwort in a field where it is growing—they will be committing an offence if they allow their horse to feed there. We are placing a far greater onus on people who have horses.

Nora Radcliffe: Witnesses also asked about the intention behind the power to establish an animal welfare body when such bodies already exist—for example, the Farm Animal Welfare Council and the Companion Animal Welfare Council.

Ian Strachan: The Farm Animal Welfare Council is a statutory body that reports to agriculture ministers in Great Britain, but the Companion Animal Welfare Council is an advisory body that has no statutory remit. We would like ministers to be able to authorise and to fund such organisations because ministers cannot spend money unless there is a legal basis for doing so. We are linking to that the possibility of introducing regulations that would set a remit for such bodies to communicate with one another so that they can share information, which could be fed into a database. The committee heard earlier about the database of animal welfare convictions, to which the provision is related.

Nora Radcliffe: The bill is not reinventing the wheel, but calling different things wheels and bringing them under the same umbrella, which is a very mixed metaphor.

The bill repeatedly mentions inspectors. Where are the term “inspector” and the competencies that inspectors must have defined? Where are the different levels of competencies for different levels of inspection or investigation defined? Will those be clarified somewhere?

Ross Finnie: I understand that such definitions will form part of the licensing regulations.

12:30

Ian Strachan: Inspectors will be members of the state veterinary service or local authority animal health and welfare inspectors. In the case of individual animals in distress, they will be individually appointed inspectors from the SSPCA. Members of the SVS and local authority inspectors will have total inspectorial powers in respect of part 2 of the bill and SSPCA inspectors will be restricted to dealing with animals in distress.

Training of inspectors is not addressed in the bill, but as the committee heard earlier, local authority animal health and welfare inspectors undergo training and earn qualifications. I have reservations about including qualifications on the face of the bill because that would restrict local authorities' ability to recruit people. I do not know of any examples of problems with local authority inspectors, and I certainly do not know of any problems that have resulted from SSPCA inspectors being inadequately trained. In common with any profession, inspectors have to learn. The local authorities operate in a way that allows inexperienced inspectors to go out with experienced colleagues. Inspectors learn in that way and they take examinations on animal health and welfare.

The Convener: Okay. Two members want to ask questions, but I am conscious that we are pushed for time. Are the questions on subjects that will form part of our report and are members desperate to ask them? Elaine Smith was first.

Elaine Smith: I would like to raise my issues briefly, if I may.

The Convener: I ask the member and minister to try to be brief. If that is not possible, we can deal with the issues in correspondence.

Elaine Smith: My questions are on section 22, under the "Promotion of welfare" provisions. In evidence, the suggestion was made that section 22(1) contains a double qualification. A submission said that the provision appears to be "unduly weak". What are your comments on that evidence?

At the end of section 22(1), the bill talks about "good practice". Is good practice the same as common practice? If that is the case, the committee may have concerns on the matter. For example, the castration of pigs was common practice, but I understand that that may not be the case any longer; industry standards have changed. It may not have been particularly good practice, however. The witness said that that the inclusion of the double qualification in section

22(1) muddies the waters because it provides a get-out clause.

Ross Finnie: Certainly, I hope that we are not providing any get-out clauses; that is not the purpose of the bill.

John Paterson: If we were to take out the words

"such steps as are reasonable in the circumstances",

we would create a duty that would ensure that the needs of an animal for which a person is responsible are met to the extent that is required by good practice. However, it might be expensive, difficult or onerous for someone to fulfil that duty in particular cases. The provision therefore states that the person has to

"take such steps as are reasonable in the circumstances".

An example does not come to mind immediately, but clearly the intention is that people should not be put in a situation in which they must fulfil a requirement without regard to cost or any other obligations that they may have outwith the realms of the bill. The requirement is therefore that they have to

"take such steps as are reasonable".

That kind of test is not dissimilar to the existing common law test that relates to negligence; I am thinking of road accidents and so forth. People have to take reasonable steps to keep a proper look-out and to drive their cars properly, but if an absolute duty were to be placed on them, and a person were involved in an accident, that person would automatically be liable.

Elaine Smith: Okay. Given the time, I cannot explore the issue further. Perhaps we can do that in the committee report.

The second issue is primates as pets, which was raised by the International Fund for Animal Welfare. The Royal Zoological Society of Scotland also raised issues in this regard. Perhaps some of their concerns can be met through exemptions. I am interested in paragraph 81 of the policy memorandum, which states:

"The Dangerous Wild Animals Act 1976 is currently being reviewed and one of the recommendations which went to out for consultation in 2004 was for certain small primates to be delisted as they are not considered a risk to the public."

Given that the bill is about animal welfare, surely exemptions should be made on the ground of welfare and not risk to the public. I seek clarification on that.

John Paterson: I do not have the policy memorandum in front of me at the moment. My recollection is that it says that certain animals are to be delisted, the effect of which will be that it will be possible to keep them. The concern is to

ensure that anybody who keeps delisted animals is able to keep them; that is, that they have all the proper facilities and training. It is difficult to achieve the required standards for keeping primates, because they have more needs than does a rabbit, for example.

Elaine Smith: The International Fund for Animal Welfare would obviously be against the keeping of primates. That is the point. Ministers can create exemptions, so I want to be clear about whether decisions on exemption would be taken on the ground of an animal's welfare.

A question arose about whether an exemption might come into force immediately or whether it might be phased in. If primates are being kept in houses at the moment, it might be more detrimental to the animals' welfare to tell the owners that they cannot keep them as of the following day than to phase the exemption in.

The Convener: Can we get some written comments on that? I am conscious of the time. Elaine Smith is right that we have had several representations on that matter and that it has come up in a previous evidence-taking session. We would like clarification on it.

Ross Finnie: We are clear about the question and about paragraph 81 in the policy memorandum. We are also clear about the consequences of immediate effect or phased implementation of any exemptions and the impact that that would have on animals.

The Convener: That would be excellent. I see that about half the committee has left, but we have fully explored several issues. More will probably come up in our report, because we have had a huge range of evidence from different witnesses.

I thank the minister and his officials for their evidence. I will allow a brief suspension to let the witnesses leave and new ones to come to the table.

12:37

Meeting suspended.

12:38

On resuming—

Subordinate Legislation

Organic Aid (Scotland) Amendment Regulations 2005 (SSI 2005/619)

The Convener: Under agenda item 3, we have a negative instrument on organic aid to consider. We considered the organic aid scheme briefly as part of our budget scrutiny in the autumn and agreed that we would take evidence from the minister when the regulations came before us, so we will have an opportunity to hear from the minister before we formally decide on the regulations, which are part of the agri-environment schemes. Each committee member has a copy of the regulations. We have had no comments from the Subordinate Legislation Committee, but we have received quite a few sets of comments from other organisations. Committee members have those comments in their papers.

I welcome Ross Finnie and his officials. I invite the minister to introduce his officials and make a brief opening statement.

Ross Finnie: Thank you very much. I am accompanied by Ron Vass and Ingrid Clayden, who both have responsibility for the agri-environment schemes. Ingrid Clayden in particular has responsibility beyond that into the rural development programme.

As the committee will be aware, we support the Scottish organic sector through the organic action plan. The amendment regulations represent a significant improvement of that support, and build on improvements that have been made over the past couple of years. The most important changes are to the grant rates that are payable under the organic aid scheme, following a review last summer of agri-environment payment rates.

As members will be aware, following changes to the single farm payment and the introduction of cross-compliance, we were required to ensure that farmers were not being double-funded, as they cannot receive agri-environment payments for measures for which they already receive compensation under the single farm payment. That is partly what triggered the review.

After an internal review identified a range of such measures in the rural stewardship scheme and the organic aid scheme, steps were taken to extract those from the relevant payment rates. However, concerns were raised by the industry, which called for a further review with stakeholders to take into account the increases in management costs and charges and the income forgone since the rates were last reviewed.

Although we have still to ensure that no double-funding results from the second review, I think that we have been able to mitigate the impact of rate reductions and, in some cases, to propose increased payment rates. With the exception of the payments for rough grazing, all the management payment rates in the organic aid scheme have been increased and some have been increased quite significantly.

As well as revising the payment rates, the amendment regulations make a number of tidying and clarification amendments to ensure, for example, consistency between the definitions of “landlord” and “tenant” in the organic aid scheme, the rural stewardship scheme and the land management contract. The definitions are also aligned with those in the Agricultural Holdings (Scotland) Act 2003. The amendment regulations also allow for tenant farmers on short-term tenancies to enter into the scheme provided that the landlord agrees jointly to assume the obligations of that agreement.

I believe that the amendment regulations are a welcome development that demonstrates our desire to continue to support organic farming. I know from the correspondence that I have received that the new rates have been welcomed by industry stakeholders.

I understand that the committee will consider the Rural Stewardship Scheme (Scotland) Amendment Regulations 2005 (SSI 2005/620) under the next agenda item. Obviously, I will be happy to take questions on both sets of amendment regulations.

The Convener: Thank you. I think that Mark Ruskell has a few questions.

Mr Ruskell: I certainly welcome the introduction of payment rates that are competitive with those in the rest of the UK, but I want to ask where the money will come from. As I understand it, the total area given to organic farming in Scotland over the past couple of years is around 300,000 hectares. The Executive's target is to ensure that a third of that—about 100,000 hectares—is improved grassland arable area. Given the competitive maintenance rates of £60 a hectare that are being offered, some £6 million will be required to provide for the maintenance of just those 100,000 hectares. In addition, we will need budgets for hill farming and for conversion to organic farming. The budgets that have been set for the next three years are hovering at around £2.5 million, which appears, at least on paper, to be grossly inadequate to meet the Executive's target, given the important generous payment rates that are being provided for in the amendment regulations.

Ross Finnie: I hope that my response will be identical to that which I gave Mark Ruskell during

the committee's consideration of the draft budget. The figures in any budget are always—and rightly—constrained by the performance and the actual spend under that heading in previous years. As Mark Ruskell will know, the two principal reasons for the decline in the conversion budget are a decline in the number of entrants wanting to convert to organic farming and the loss of a number of people from hill farming and the attached subsidy. As I said in my response when the committee was considering the draft budget, if the new rates induce a higher uptake among new entrants, I will clearly need to review the schemes under that part of the budget heading and reallocate funds. I do not have infinite resources and I have to balance those that I do have. I hope that there will be a higher uptake of entrants to organic farming, although that will mean a squeeze elsewhere. That is the nature of budget decisions.

Mr Ruskell: As I understand it, the maintenance payments apply to all organic land. As I have just said, even the £60 payments—which are the reduced payments after the initial payments of £120 in the first two years—will amount to £6 million. I am sitting here staring at a budget allocation of £2.5 million.

12:45

Ross Finnie: You are assuming that absolutely everybody in our target total will apply this year. That would require a remarkable change. I have no control over who will or will not apply. All that I can do is promote organic farming and the scheme and publish our payment rates. As I have said, the budget line that you are looking at includes other expenditure on rural development. Clearly, if there is a dramatic uptake and we head towards our target figures for organic farming, other elements of expenditure on rural development will have to be curtailed.

Mr Ruskell: If you offer all the organic farmers in Scotland a payment of £60 a hectare, they will take it up. They will have to take it up in order to stay competitive with other organic farmers in England and Wales and the rest of Europe. If a third of the organic area in Scotland is to be improved grassland or arable land, the expenditure will be £6 million. I am still having trouble equating the payment rates that you have presented with the budget allocation, which—just for those two categories of land—is less than half of what is needed.

Ross Finnie: You are ignoring the rest of the rural development budget. Money does not grow on trees. When I gave evidence on the budget to this committee, I accepted that an uptake in organic schemes would be at the expense of other headings within the rural development budget.

The Convener: That is on the record, but the concern is that we do not slacken off in our promotion of organic farming just because we think that someone else will suffer. A reassurance from you that organic farming remains a central part of the Executive's farming strategy would be helpful.

Ross Finnie: The only constraint on me is exactly the one that I described to Mark Ruskell when he asked an almost identical question during my evidence on the budget. The budget lines in rural development will simply have to be reallocated. I will be happy if there is a hugely increased uptake in the organic aid schemes, but that will mean—as it always does—that some other budget lines will suffer.

Mr Ruskell: My final question is about targets. There are two targets in the organic action plan, but they are both proportions of a total—the total land area and the total amount of organic produce marketed in Scotland. Is it not the case that the targets could be met even if the amount of land farmed organically went down and the amount of produce consumed went down as well? Would you be happy to meet the targets through, in effect, a collapse in the organic sector?

Ross Finnie: I am unclear as to what you mean. I am sorry; I am not trying to be awkward.

Mr Ruskell: Your target for land is that 30 per cent of the total area should comprise improved grassland and arable land. The target is a proportion, so if the total land area goes down, it could result in the target being met. Would you consider that a positive outcome?

Ross Finnie: No.

Mr Ruskell: In effect, are you presenting a budget for the organic aid scheme, and a payment rate, that will lead to an increase in organic land area in Scotland.

Ross Finnie: I hope so.

Mr Ruskell: Do you still feel that the payment rate is covered adequately in the budget and reflects the different priorities that you have for the rural stewardship scheme and the organic aid scheme?

Ross Finnie: We are now back to the very beginning. As I said to you in evidence on the budget, when drawing up the budget I have a finite sum of money. The allocations are based on the demand for each scheme under each heading—on actual performance. However, if there is an absolute increase in the organic aid scheme, which is not subject to any other control, we will have to meet that demand. That is the same for all the headings, but it is particularly the case for the organic aid scheme. We will meet that demand by trimming back the other budget headings.

The Convener: That is quite clear. We welcome the fact that the organic sector has been enthusiastic about the new level of payments. The key point is to encourage more people to enter the scheme and ensure that we meet the Executive's targets. The message in agreeing the regulations should be that here is a new opportunity for people, more of a level playing field and that we hope to see an expansion of organic produce. All the other comments about marketing and support for the sector need to be taken in that context. Does anyone else want to say anything desperately?

Mr Alasdair Morrison (Western Isles) (Lab): The only thing that I want to say desperately is, let us move to agree the regulations.

The Convener: I am trying to get us to that point.

Are members content with the regulations and happy to make no recommendation to Parliament?

Members indicated agreement.

The Convener: I thank the minister and his officials and invite them to leave. As they do so, we will crack on with our agenda.

Plant Health (Scotland) Order 2005 (SSI 2005/613)

Rural Stewardship Scheme (Scotland) Amendment Regulations 2005 (SSI 2005/620)

Avian Influenza (Preventive Measures) (Date for Identification of Poultry Premises) (Scotland) Regulations 2005 (SSI 2005/625)

Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/645)

Avian Influenza (Preventive Measures) (Scotland) Amendment Regulations 2005 (SSI 2005/646)

Avian Influenza (Preventive Measures in Zoos) (Scotland) Amendment Regulations 2005 (SSI 2005/647)

The Convener: There are six further Scottish statutory instruments to consider today under the negative procedure.

Members have the papers from the Subordinate Legislation Committee, which considered the instruments, and commented on only the first three. Members have extracts from that committee's report. Do members have any comments?

Mr Ruskell: Yes, I have a brief comment on the Rural Stewardship Scheme (Scotland) Amendment Regulations 2005. It is clear in the light of what the minister just said that there are substantial issues about the payment rates for the different management options laid out in the regulations. I am content to agree the regulations, but serious total budget implications are being completely overlooked.

The Convener: The minister made it clear that he would have to meet the budget requirements for all the schemes, so that is his call. I presume that we will be able to scrutinise that in the next budget round. There has always been fuzziness around those headings, as there was about common agricultural policy reform.

Nora Radcliffe: I make the point, almost on behalf of the Executive, that we have to cut our coat according to our cloth. There is no point in having money lying in a budget that will not be used. Budgets change from year to year. If there is an obvious upswing in the uptake of the organic aid scheme, I presume that it will be reflected in future budgets. However, why have £6 million sitting in a budget that will not be used? It would be far more sensible to use it for something else in the meantime, when there is an option to rejig it in a later budget.

Mr Ruskell: The issue with the Rural Stewardship Scheme (Scotland) Amendment Regulations 2005 and the Organic Aid (Scotland) Amendment Regulations 2005 is not about whether there will be an uptake of the scheme; rather, as with the organic maintenance payment, the scheme should be a right for all organic farmers to take up. Therefore, it is not dependent on the total land area; it is almost a fixed cost that farmers will expect to buy into. For that reason, there is a financial implication for the rural stewardship scheme and the budget that will be available for it, and indeed to implement the regulations.

The Convener: That is the minister's job, is it not? He will have to allocate funds to meet the provisions that he proposes. We have been negative about aspects of the budget when we have felt that it has not been an accurate reflection. I expect next year's budget to reflect a much higher level of support for the organic aid scheme than formerly. The minister will have to juggle his figures over the next few months.

However, no one has said anything that would make us not agree any of the regulations or the order. As there are no further comments, can I take it that members are content with the order and the regulations and are happy to make no recommendation to the Parliament?

Members *indicated agreement.*

The Convener: Our next meeting will be next Wednesday.

Meeting closed at 12:54.

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